

**BEFORE THE  
POSTAL RATE COMMISSION  
WASHINGTON, DC 20268-0001**

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**Complaint on First-Class Mail  
Service Standards**

**Docket No. C2001-3**

**DOUGLAS F. CARLSON  
MOTION FOR RECONSIDERATION  
OF PRESIDING OFFICER'S RULING NO. C2001-3/24**

**July 3, 2002**

After Presiding Officer's Ruling No. C2001-3/24<sup>1</sup> was issued on June 4, 2002, I identified two broad areas of concerns with the ruling, which resolved a discovery dispute over disclosure of volume data that I requested in interrogatory DFC/USPS-1. The Postal Service contacted me with its own concerns. We discovered some overlap in our concerns. In extended discussions over the past few weeks, we sought to reconcile our differences with the intention of jointly moving for reconsideration of POR C2001-3/24 and proposing new parameters for disclosure. We have reached a compromise that we are jointly proposing today.

Since the Postal Service and I must demonstrate why the presiding officer should reconsider POR C2001-3/24, we are filing separate pleadings to explain our concerns with the original ruling. To avoid duplication, however, we have agreed that the Postal Service's pleading<sup>2</sup> will explain the characteristics of the disclosure that we jointly propose for a revised ruling. The Postal Service and I reviewed final drafts of each other's pleadings before we filed them.

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<sup>1</sup> POR C2001-3/24, filed June 4, 2002.

<sup>2</sup> Motion of the United States Postal Service for Reconsideration of Presiding Officer's Ruling No. C2001-3/24 ("Postal Service Motion"), filed July 3, 2002.

My first issue for reconsideration is the presiding officer's decision to permit the Postal Service to collapse the raw volume data into descriptive categories and then present the data by category name — e.g., high, medium, or low. POR C2001-3/24 at 2–3. The ruling potentially grants the Postal Service the discretion to define these descriptive categories. The ruling does not require the Postal Service to provide the actual volume data, either publicly or under protective conditions.

The presiding officer should require the Postal Service to supplement its public filing with a separate filing under protective conditions that provides the raw volume data (as described in the Postal Service's pleading being filed today). The presiding officer's ruling sets a potentially dangerous precedent whereby a party opponent would be permitted to analyze data that it controls and then place its own qualitative spin on the data before presenting it to the opposing party. In this instance, the Postal Service could define the categories in a way that might be beneficial to its case and detrimental to my case. This manipulation of the data would be invisible to anyone who was not privy to the raw data. I do not intend to suggest that such a manipulation would occur in this case, but the risk now or in the future cannot be ignored if this ruling is allowed to set a precedent.

In fact, this ruling appears to conflict with Commission precedent. In Docket No. C2001-1, the Postal Service defied the presiding officer and refused to file Collection Box Management System (CBMS) data publicly. Instead, the Postal Service merely analyzed the data and filed a derivative compilation that allegedly fully satisfied my need for the data. The presiding officer rejected the Postal Service's action:

In its limited response to DFC/USPS-19, the Postal Service determined what material it thought was relevant, digested the material, and provided the material in summary form. *The policy of the Commission is to allow the participant requesting discovery material the leeway to analyze, compile, digest, and draw conclusions from discovery material as he sees appropriate.*

Order No. 1331 at 18–19 (emphasis added), filed November 27, 2001. Although the issue at hand does not involve a party opponent's attempt to determine which data are relevant, the presiding officer's ruling effectively permits the Postal Service to digest the volume data and provide it in summary form. The ruling most certainly denies me the leeway to analyze, compile, digest, and draw conclusions from the discovery material.

The presiding officer's ruling obviously is an attempt to craft a reasonable balance between the interest in public disclosure that I have articulated and the Postal Service's interest in preventing public disclosure of volume data. Fortunately, the problem described herein can be corrected if the presiding officer supplements the ruling to require the Postal Service to provide raw data under protective conditions. The Postal Service initially sought to file raw data under protective conditions. I do not object to subjecting my access to the raw data to protective conditions, as long as a summary form of the data is available for public disclosure, too.<sup>3</sup>

The second broad issue for reconsideration concerns the presiding officer's decision to require the Postal Service to produce only data for mail volumes between ZIP Codes in the 11 western states for which the service standard was changed from two days to three days. My interrogatory requested volume data for mail originating in the 11 western states *plus New Jersey*.

The Postal Service did not object to providing the volume data for New Jersey. See Opposition of the United States Postal Service to Douglas Carlson Motion to Compel Response to DFC/USPS-1, filed November 14, 2001. I included New Jersey in my interrogatory because I sought an example from outside the western states of a change in a service standard from two days to

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<sup>3</sup> In Docket No. C2001-1, the presiding officer ordered the Postal Service to produce one set of CBMS data under protective conditions and another set free of protective conditions. I declined to accept CBMS data under protective conditions. That situation was different from this one, however. In Docket No. C2001-1, I refused to agree to protective conditions for data that already were publicly available. In this situation, the raw volume data are not publicly available. Therefore, I do not object to receiving raw volume data under protective conditions and a summary form of the same data free of protective conditions.

three days for city pairs that, I suspected, had a substantial business relationship reflected in volume. When the Postal Service changed the service standards in 2000 and 2001, the service standard between Chicago and New Jersey changed from two days to three days. Since the Commission generally hears only service complaints concerning issues whose scope is substantially nationwide, Rule 82, I must be able to argue on brief that the Postal Service's failure to provide adequate service extends beyond the western states and in fact affects customers nationwide. I requested data for New Jersey because volume data from New Jersey to Chicago likely will provide an ideal example of a high-volume ZIP Code pair outside the western states that experienced a downgrade from two days to three days.

I limited my interrogatory to 11 western states plus New Jersey because a truly nationwide analysis might have posed a daunting analytical task. Nonetheless, the Postal Service did not object to providing volume data for New Jersey, and I request that the data be provided to ensure that I am able to present a case that indisputably involves issues on a substantially nationwide basis.

The Postal Service's motion for reconsideration describes the disclosure of data that we jointly propose as reasonable and sufficient to advance resolution of the issues in this case while ensuring an appropriate level of public disclosure.

Respectfully submitted,

Dated: July 3, 2002

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DOUGLAS F. CARLSON

## **CERTIFICATE OF SERVICE**

I hereby certify that I have this day served the foregoing document upon the required parties in accordance with section 12 of the *Rules of Practice*.

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DOUGLAS F. CARLSON

July 3, 2002  
Santa Cruz, California